

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NEIL GRENNING,

Plaintiff,

v.

MAGGIE MILLER-STOUT, sued in  
official capacity; and FRED FOX, sued  
in official capacity,

Defendants.

NO: 2:09-CV-389-RMP

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This case was tried before the Court commencing on August 15, 2016.

Plaintiff Neil Grenning (“Grenning”) was represented by Hunter Ferguson and Reid McEllrath of Stoel Rives, and Defendants Maggie Miller-Stout (“Miller-Stout”) and Fred Fox (“Fox”) were represented by Jerry P. Scharosch and Timothy J. Feulner, Washington State Attorney General’s Office, their respective attorneys of record. Grenning filed suit seeking the following relief: (1) a declaratory judgment that the 24-hour lighting used during his SMU confinement in January 2009 is cruel and unusual punishment in violation of the Eighth Amendment; (2) a permanent injunction barring Airway Heights Correctional Center (“AHCC”) from subjecting

1 Grenning to 24-hour lighting with a brightness or intensity the same or similarly  
2 dangerous as that used in January 2009 in any future confinement in the SMU; and  
3 an order awarding reasonable attorney fees and costs.

4 Prior to trial, the parties stipulated to the following facts:

5 Grenning is a Washington State prisoner incarcerated at AHCC. On January  
6 7, 2009, Grenning was engaged in an altercation with another inmate, Michael  
7 Murray and following this incident, Grenning sought treatment in the AHCC  
8 medical unit. After he received medical treatment, Grenning was confined in the  
9 AHCC Special Management Unit (“SMU”) from January 7, 2009, through January  
10 20, 2009.<sup>1</sup>

11 Grenning’s medical records maintained by AHCC/Department of Corrections  
12 and produced in this case do not contain any record showing that Grenning visited  
13 the AHCC medical unit after his January 7, 2009, visit until June 1, 2010. Other  
14 than the chart note on January 7, 2009, Grenning’s medical records maintained by  
15 AHCC/Department of Corrections and produced in this case do not indicate that  
16 Grenning sought medical treatment in the AHCC medical unit for any alleged  
17 injuries between January 7, 2009, and January 20, 2009.

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19 <sup>1</sup> Plaintiff represents that he has been sent to the SMU through no fault of his own,  
20 and Defendants presented testimony that inmates can be sent to SMU for a number  
21 of reasons, including in the interest of their own protection.

1 Except for staff misconduct grievances, the Department of Corrections'  
2 Offender Grievance Program has four levels. The first level is the offender  
3 complaint level, or Level 0. At this stage the local grievance coordinator reviews the  
4 grievance and determines whether the grievance can become a formal grievance.  
5 The first formal level is Level I. At this level of review, the local grievance  
6 coordinator is the respondent for the grievance under DOC procedures. Grievances  
7 at Level 0 or Level I do not come before the Superintendent or his/her designee for  
8 review as a matter of course under DOC procedures.

9 If the inmate is not satisfied with the Level I response, he can appeal to Level  
10 II. At Level II, the respondent is the Superintendent or the Superintendent's  
11 designee. If the inmate is still not satisfied with the Level II response, he can appeal  
12 to Level III. At Level III, the respondent is the Deputy Secretary or the Deputy  
13 Secretary's designee.

14 Fifteen grievances were filed by other inmates related to the lighting between  
15 2000 and 2009 and were produced in this case. Of those fifteen, the only three  
16 grievances that went to Level II or higher were Log ID Nos. 0010034 and 0122425,  
17 which went to Level III, and Log ID No. 0907705 which went to Level II. The other  
18 twelve grievances reached only Level I or the offender complaint level, including  
19 Log ID Nos. 0322009, 0526052, 0306314, 0120365, 0115929, 0508996, 0424317,  
20 0603210, 0407882, 0107025, 0119532, and 0116896.

**RELEVANT TRIAL TESTIMONY**

Defendant Miller-Stout testified that the SMU lighting is not intended to be punitive, but is instead meant to protect the safety and security of the inmates, the correctional officers, and the facility. Defendants presented testimony that in the SMU, correctional officers must check on high-risk inmates who are more likely to either violate prison rules or to be victims of other inmates and are at an increased risk of being suicidal. Despite these purposes and intentions, Plaintiff presented the testimony of three witnesses to argue that the 24-hour lighting in the SMU is still in violation of the Eighth Amendment's prohibition against "cruel and unusual punishment."

Plaintiff first called Tracy Rapp, a licensed engineer, to speak as an expert regarding lighting, and Defendants stipulated to his expertise. Rapp testified that on May 26, 2016, he conducted an investigation of a cell in the SMU at AHCC by taking pictures and taking light measurements in various portions of the cell. Rapp testified that the light fixture in the cell had three tube lights. The center bulb always remained on and the two side-bulbs could be controlled by an inmate with a switch inside the SMU cell. In relevant part, Rapp testified that his reading at the head of the bed reflected 7.1 foot candles when only the 24-hour, center light was illuminated, and an average of 5.9 foot candles in the rest of the room. In testifying about his readings, Rapp did not include precise measurements regarding the distance of his light meter from the light fixture.

1 Rapp discussed additional measurements that he had taken for demonstrative  
2 purposes, such as the light measurements from underneath a parking-lot light (3.4  
3 foot candles); on the back seat of a sport-utility vehicle with the dome light on (1.4  
4 foot candles); a television set in a dark room, etc. Rapp also referred to lighting  
5 standards from various organizations and safety codes. Rapp acknowledged that  
6 there is no standard for lighting in SMU cells, but he analogized the setting to  
7 construction sites or public streets “where loitering or criminal attacks are likely to  
8 occur.” Rapp also referenced standards for egress lighting. However, Rapp failed to  
9 adequately explain why these settings were helpful for determining proper lighting  
10 within a prison setting, or how standards for egress lighting would be applicable to  
11 an SMU cell.

12 Rapp’s testimony was later challenged by Defendants’ expert witness, Keith  
13 Lane, a professional electrical engineer and expert in lighting design, who testified  
14 that not only is egress lighting unhelpful for an analysis of proper lighting in a prison  
15 setting, but that Rapp’s testimony also focused on the wrong measurements.  
16 Although the parties stipulated to Rapp’s expertise to enable him to testify about  
17 lighting issues, his expertise was in general electrical engineering. Lane’s expertise  
18 was specifically focused on lighting.

19 Rapp testified about averages but, as Lane pointed out during his testimony,  
20 Rapp failed to mention any analysis of maximum-to-minimum ratios, which account  
21 for the full range of foot-candle measurements in a room under various light settings.

1 As Lane explained, maximum-to-minimum ratios take into account the effects of  
2 fixtures in a room which can cause shadows or otherwise block visibility, important  
3 issues in the SMU where guards are looking through a window in the door to  
4 observe what is occurring in the cell.

5 Importantly, Rapp's testimony was void of any recognition of the purpose  
6 served by the SMU and how lighting must be used by correctional officers. He  
7 testified as to what he thinks would be sufficient lighting "necessary to perform a  
8 certain visual task" but without any knowledge of what "visual tasks" must be  
9 performed in the SMU. Rapp failed to recognize the objectives of correctional  
10 officers who depend on lighting in the SMU, and Rapp could not reliably testify  
11 about what level of lighting would be necessary to identify blood, injuries to an  
12 inmate, or the presence of contraband. Rapp's understanding of what activities  
13 could occur in a SMU cell was minimal as he referenced: "sleeping," "laying in a  
14 cot," and "moving around," but did not recognize the possibility of suicides or  
15 assaults on passing guards that occur within the SMU. Lane's testimony  
16 differentiated the lighting codes and standards that Rapp referenced, such as those  
17 that are applicable to egress lighting, with the level of lighting needed to observe  
18 activities in a cell.

19 The Court finds that Lane's testimony was based on a broader understanding  
20 of lighting issues and of the specific lighting needs in the SMU.

1 Plaintiff's second witness was a Doctor of Osteopathic Medicine, Amy  
2 Aronsky, a purported expert of "sleep medicine and behavioral medicine."  
3 Defendants stipulated to her expertise, but the Court finds that her testimony went  
4 beyond the scope of this stipulated expertise. Doctor Aronsky reviewed Plaintiff's  
5 medical file, but never examined him personally, and concluded that the cause of his  
6 alleged sleep deprivation and headaches was the lighting in the SMU. Dr. Aronsky  
7 testified that placing him back in the SMU with 24-hour lighting "would certainly  
8 recreate his migraine headache symptoms." Dr. Aronsky asserted that she could  
9 make this prospective conclusion "beyond a shadow of a doubt."

10 The Court affords minimal weight to Dr. Aronsky's testimony and to her  
11 conclusions and assertions for a number of reasons. First, Dr. Aronsky applied the  
12 standard of "beyond a shadow of a doubt" when expressing her prospective medical  
13 diagnosis regarding causation, which the Court finds of questionable validity  
14 considering the number of variables that she did not consider. Dr. Aronsky never  
15 examined Plaintiff, never spoke with him, and was completely unaware of his recent  
16 injuries or the nature of his convictions for sexual crimes against children that would  
17 make him a likely target for violence in prison and could result in increased anxiety,  
18 both for his own safety and possibly remorse, and that could be contributing factors  
19 of his insomnia. Furthermore, Dr. Aronsky testified that neither a decrease in  
20 lighting nor the use of sleep masks would change her conclusion that Grenning  
21

1 would suffer from headaches if returned to the SMU with any level of 24-hour  
2 lighting.

3 Dr. Aronsky based her conclusions largely on Plaintiff's self-reported  
4 symptoms as she found them to be "classic" for sleep deprivation. Dr. Aronsky  
5 testified that "any light exposure, even at the lowest levels, will result in sleep  
6 deprivation." Accordingly, her testimony conflicts with the relief that Plaintiff  
7 requests as he seeks an injunction that does not eliminate all lighting, but simply  
8 requires Defendants to dim the 24-hour light in SMU cells. If the Court were to give  
9 credence to Dr. Aronsky's conclusions, which she bases on vague references to  
10 "medical literature," and "good old-fashioned common sense," Plaintiff would still  
11 be left without any remedy as neither party has suggested that the lights of the SMU  
12 should be completely shut off.

13 Dr. Aronsky failed to address the fact that Plaintiff's symptoms, such as  
14 headaches and insomnia, which she attributed solely to sleep deprivation, had  
15 occurred for most of his life in other settings. Grenning testified that he experienced  
16 headaches since middle school and while meeting with his attorney the day before  
17 this trial.

18 Dr. Aronsky testified that the 24-hour lighting caused Grenning's medical  
19 symptoms, and on cross-examination, Dr. Aronsky stated that any dimming of the  
20 lights would not affect her opinion. Recognizing that she never spoke with Plaintiff,  
21 Dr. Aronsky admitted to being ignorant of major stressors in Plaintiff's life, such as



1 the nature of his criminal acts, his work on a graveyard shift, Plaintiff's description  
2 of the SMU as often being loud, or the fact that Plaintiff had been head-butted in the  
3 face by another inmate just prior to complaining of headaches in the SMU.

4 Despite lacking all of this information, and without meeting Grenning  
5 personally, Dr. Aronsky testified that she had considered everything that she felt was  
6 necessary to conclude that his headaches were caused by the lighting in SMU and  
7 that nothing could make her doubt her conclusions. When asked on cross-  
8 examination whether any of the information that she had not considered would affect  
9 her determinations, Dr. Aronsky stated that not one of those considerations would  
10 cause her to doubt her conclusions.

11 The Court does not afford Dr. Aronsky's testimony significant weight because  
12 of her limited investigation into Grenning's history and circumstances, her disregard  
13 of other potential factors relating to his headaches, as well as her questionable  
14 expertise in light-related sleep disorders.<sup>2</sup>

15 Plaintiff, Neil Grenning, asserts that the 24-hour light within the SMU  
16 violated the Eighth Amendment's prohibition on "cruel and unusual punishment"  
17 because it caused him to be sleep-deprived and to suffer from migraine headaches.

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19 <sup>2</sup> Dr. Aronsky testified that two of her more recent publications related to correct  
20 "coding" for billing purposes in sleep medicine. This fact does not strengthen the  
21 Court's confidence in her testimony in this case.

1 However, his testimony undercut the causal link between the SMU lighting and his  
2 alleged symptoms. Plaintiff testified extensively that he has suffered from the same  
3 types of headaches that he had in the SMU since he was a student in middle-school  
4 in the early 1990s; that he experiences the headaches once or twice a month,  
5 presumably even when housed outside of the SMU; that he suffers from sensitivity  
6 to light outside of the SMU; and that he most recently suffered a “light-related  
7 headache” on the day before trial while meeting with his attorney. Plaintiff  
8 presented records and testimony of the numerous times that he was seen by medical  
9 providers while incarcerated; that he received glasses for his condition, which he did  
10 not utilize in the SMU; and that he was repeatedly prescribed ibuprofen for his  
11 symptoms.

12 Grenning acknowledged that AHCC has implemented at least two changes in  
13 the SMU that are relevant to his claims: first, AHCC installed lower intensity lights  
14 in the SMU; and second, eye masks are available to all inmates for \$1.24 per mask.  
15 If an inmate does not have funds on hand, the inmate may purchase a mask on credit.  
16 Although Grenning has not tried using a sleep mask in the SMU setting, he testified  
17 that he has a sleep mask and that light somehow “seep[s] around” the mask and that  
18 some light continues to penetrate through it, interrupting sleep. Plaintiff also did not  
19 address how the lower intensity lights that were installed by August 2013 would  
20 affect his symptoms.

1 The Court finds that Plaintiff's testimony undermined the causation of his  
2 symptoms as being due to the 24-hour light in the SMU because of his long history  
3 with the headaches and his headaches occurring outside of the SMU. Additionally,  
4 Plaintiff failed to provide evidence to question whether the installation of lower  
5 intensity lights and the availability of sleep masks are sufficient to reduce the harm  
6 that he has alleged, thereby rendering his claim for injunctive relief moot.

### 7 ANALYSIS

8 In order for Plaintiff to prove his Eighth Amendment claim, he must  
9 demonstrate that Defendants deprived him of a "minimal civilized measure of  
10 life's necessities," *see Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)  
11 (quoting *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting *Wilson v.*  
12 *Seiter*, 501 U.S. 294, 304 (1991))), and that Defendants acted with "deliberate  
13 indifference" in doing so, *see Farmer v. Brennan*, 511 U.S. 825 (1994). The Ninth  
14 Circuit has directed this Court to apply the "deliberate indifference" standard,  
15 although "[t]he existence of a legitimate penological justification has [] been used  
16 in considering whether adverse treatment is sufficiently gratuitous to constitute  
17 punishment for Eighth Amendment purposes." *Grenning v. Miller-Stout*, 739 F.3d  
18 1235, 1240 (9th Cir. 2014).

19 Defendants analogize this case to the facts of *Chappell v. Mandeville*, 706  
20 F.3d 1052, 1058 (9th Cir. 2013), in which a prisoner was subjected to continuous  
21 light for seven days. The Ninth Circuit in *Chappell* made reference to a number of

1 other courts that had investigated the existence of an Eighth Amendment violation  
2 for continuous lighting, and although the results were mixed and fact-specific, “[a]  
3 large majority of the courts [] concluded that there was no Eighth Amendment  
4 violation.” 706 F.3d at 1059. Although the Ninth Circuit did not determine  
5 whether a violation had occurred because Defendants in that case were entitled to  
6 qualified immunity, the court stated that it had “some doubt that the conditions that  
7 Chappell experienced . . . amounted to an Eighth Amendment violation.” *Id.*

8 On the other hand, in *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996),  
9 the Ninth Circuit held that when an inmate alleged physical and psychological  
10 harms due to continuous light for a period of six months, he had alleged enough to  
11 survive summary judgment regarding whether he had been deprived of the  
12 “minimal civilized measure of life’s necessities.”

13 At the summary judgment stage in this litigation, the district court approved  
14 the magistrate judge’s determination that in order for Plaintiff to be entitled to  
15 injunctive relief, he must demonstrate that (1) he suffered an irreparable injury; (2)  
16 the remedies available at law are inadequate to compensate for the injury, (3) the  
17 balance of hardships between the parties warrants a remedy in equity, and (4) the  
18 public interest is not disserved by a permanent injunction. *See eBay v.*  
19 *MercExchange, LLC*, 547 U.S. 388, 391 (2006); ECF No. 136 at 13.

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1           **(1) Whether the lighting caused Grenning any injury**

2           Plaintiff's claim is premised on his assertion that the 24-hour lighting in the  
3 SMU caused what he believed to be light-related headaches and sleep deprivation.  
4 Plaintiff has the burden of proving causation by a preponderance of the evidence.  
5 However, Plaintiff has failed to produce evidence beyond his own subjective  
6 conclusions and Dr. Aronsky's conclusory statements regarding the connection  
7 between the 24-hour lighting and his symptoms.

8           Plaintiff's testimony also undermines the causation element because he  
9 testified that he suffers from the same symptoms that he allegedly experienced in the  
10 SMU in different settings and has suffered with these same issues for a majority of  
11 his life, before he ever was incarcerated and long before he was sent to the SMU.  
12 Furthermore, Plaintiff testified that the most recent time that he suffered a headache  
13 so severe that it caused him to vomit was while he was meeting with his attorney on  
14 the day before trial began in this matter, outside of the SMU and not subject to 24-  
15 hour lighting. Plaintiff failed to address other possible causes of his symptoms,  
16 including the fact that he was head-butted, punched, and thrown by another inmate  
17 just prior to being sent to the SMU; the anxiety he admitted to experiencing in  
18 prison; the noise in the SMU; and other health issues like nausea, heartburn, and  
19 aches.

20           The only evidence presented at trial, besides Grenning's own conclusions,  
21 supporting the proposition that the 24-hour lighting in the SMU caused Plaintiff's

1 purported symptoms came in the form of Dr. Aronsky's conclusory testimony. As  
2 stated previously, the Court finds this testimony to be of little weight. Dr. Aronsky  
3 conceded that she had never met Plaintiff; never examined him; was unaware of a  
4 number of important variables, including the circumstances of the inmate assault on  
5 Plaintiff; and had never visited the SMU cell to see the lighting that she deemed to  
6 be the cause of his medical issues. Dr. Aronsky testified that in her opinion, any  
7 light would cause sleep deprivation which would cause his headaches.

8 Based on the foregoing, the Court finds that Plaintiff has failed to demonstrate  
9 that the lighting within the SMU caused him any injury.

10 **(2) Whether the lighting levels in the SMU created an excessive risk of**  
11 **serious harm to Grenning sufficient to offend contemporary standards**  
12 **of decency**

13 The parties do not dispute that lighting is necessary within the SMU to enable  
14 welfare-checks by the correctional officers, but the parties dispute whether the  
15 current brightness of the 24-hour lighting is necessary or creates an excessive risk of  
16 harm. Plaintiff argues that something dimmer is sufficient, but did not provide  
17 credible evidence regarding any specific remedy or benchmark by which the Court  
18 could determine whether the current brightness is excessive.

19 Tracy Rapp referred to a measure of one foot-candle being bright enough for a  
20 welfare-check, but his testimony was disconnected from what correctional officers  
21 need in the SMU. Plaintiff failed to provide any measure of what would be  
sufficient lighting to allow officers looking through a window in the cell door to

1 view blood, injuries, or contraband, and the Court has no evidence from which it  
2 could conclude that a lower level of lighting would adequately serve these purposes.

3 Rapp suggested alternatives to the 24-hour light, such as installing a switch  
4 that would allow both the inmates and correctional officers to control the 24-hour  
5 light. This suggestion, however, did not address how a guard's switching a light on  
6 every thirty minutes during the night for welfare-checks would be any less disruptive  
7 to an inmate's sleep than a continuous light. Defendant Miller-Stout testified that  
8 switching lights on and off as the correctional officers moved down a cell-block also  
9 would telegraph their movement to the inmates, putting the officers at a higher risk  
10 of attack and allowing inmates to plan covert actions around the officers'  
11 movements.

12 Plaintiff's evidence can be divided into two groups: Dr. Aronsky's testimony  
13 that any light would cause sleep deprivation; and Tracy Rapp's testimony comparing  
14 the intensity of the 24-hour light to his light readings in various settings, such as the  
15 back seat of a car or a television screen in a dark room. None of the Plaintiff's  
16 evidence is persuasive that the current 24-hour light creates an excessive risk of  
17 serious harm to Grenning, nor that it offends contemporary standards of decency.  
18 Furthermore, considering Defendants' evidence that AHCC already has installed  
19 less intense lights and currently provides inmates access to sleep masks, the Court  
20 finds that any risk imposed by the lighting is further diminished.

1 The Court finds that neither Dr. Aronsky's inferred proposal of no lights at all  
2 nor Rapp's alternative suggestions of switching lights on and off or maintaining  
3 unrealistically low light levels is practical, considering the purpose of the lights and  
4 the realities of the SMU. Plaintiff also did not submit evidence that any of his  
5 proffered alternatives would resolve his personal symptoms and the basis of his  
6 lawsuit.

7 **(3) Whether Defendants were deliberately indifferent to any risk posed by**  
8 **the lighting**

9 The parties split this factual inquiry into two sub-parts:

10 **(a) Whether Defendants were aware of any risk created by the lighting**

11 Plaintiff has the burden of proving by a preponderance of the evidence that the  
12 24-hour lighting caused specific risks and that Defendants were aware of those risks.  
13 Plaintiff argued that there were fifteen complaints about lighting at AHCC, which  
14 Defendants argue comprised .06% of the total number of complaints during the  
15 relevant time period. The parties submitted exhibits affirming that both Fred Fox  
16 and Maggie Miller-Stout were aware of complaints about the 24-hour lighting in the  
17 SMU and responded that the issues raised in the prisoner grievances did not require  
18 a change in lighting. *See* Exhibits 53 and 224.

19 Fox dealt directly with Grenning's grievance, but the extent of Miller-Stout's  
20 knowledge regarding Grenning's complaint is unclear. However, based on the  
21 evidence presented by Plaintiff, the Court finds that both Fred Fox and Maggie



1 Miller-Stout were aware of complaints from inmates regarding the 24-hour lighting.  
2 As previously addressed, the Court finds that Plaintiff has failed to provide sufficient  
3 evidence to prove by a preponderance that he suffered “any risk created by the  
4 lighting.” Therefore, the Court finds that Defendants were not aware of any risk to  
5 Plaintiff created by the lighting.

6 **(b) Whether Defendants acted reasonably in light of any risk**

7 Defendant Fox testified that when he received Plaintiff’s grievance about the  
8 lighting, he spoke with his supervisor, who informed him that the American  
9 Corrections Association (ACA) had reviewed the SMU and that the lighting was in  
10 line with their requirements. Additionally, he testified that he had checked with the  
11 facility’s medical unit in an effort to find out more information about possible  
12 medical issues and if the SMU would, in fact, be significantly detrimental to  
13 Plaintiff. Fox testified that the medical department informed him that they had not  
14 received any complaints from Grenning relating to the conditions in the SMU. The  
15 Court finds that Fox’s inquiries constituted a reasonable response to Plaintiff’s  
16 grievance.

17 Defendant Miller-Stout similarly testified that when she received  
18 notification of a complaint regarding the lighting in the SMU, she relied on a prior  
19 federal case that arose in this federal district, *Ridley v. Walters*, which held that the  
20 lighting in the SMU at AHCC did not violate the United States Constitution.  
21 Although the extent of Miller-Stout’s knowledge regarding Grenning’s complaint

1 remains unclear, Defense counsel provided a notice addressed to Miller-Stout  
2 stating that Grenning's Level II grievance was denied by an Administrative  
3 Program Manager due to the ruling of a federal court. *See* Exhibit 227. If the  
4 Court reads Exhibit 227 as demonstrating Miller-Stout's response to Grenning's  
5 grievance, the Court finds that Miller-Stout's reliance on previous case-law  
6 allowing the same lighting at the same facility was reasonable.

7 **(4) Whether there is a sufficient likelihood of Grenning again being**  
8 **confined in the SMU under the same conditions that he faced in**  
9 **January 2009**

10 Plaintiff testified that he has been placed in some sort of segregation about  
11 twelve times, sometimes as a result of the actions of others. Plaintiff was sentenced  
12 to a term of 116 years imprisonment, making it substantially likely that he will be  
13 placed in segregation again at some point in the future.

14 In the time since Plaintiff was placed in the SMU at AHCC in 2009,  
15 Defendants have replaced the bulbs in the SMU with lower wattage bulbs and have  
16 given inmates access to sleep masks to cover their eyes from the 24-hour light.  
17 Although Plaintiff argues that these changes would be insufficient to address his  
18 symptoms, the record is void of evidence to support that assertion. Therefore, the  
19 Court has insufficient evidence to find it likely that Grenning will be subject to the  
20 same conditions that he experienced in the SMU in January of 2009.

21 Prior to trial, the parties proposed five "issues of law" to be determined by the  
Court. Considering the findings outlined above, the Court addresses each in turn.

1           **(1) Whether exposure to the lighting in the SMU is sufficiently serious to**  
2           **violate the Eighth Amendment**

3           The Ninth Circuit Court of Appeals has stated that “[t]here is no legitimate  
4           penological justification for requiring [inmates] to suffer physical and psychological  
5           harm by living in constant illumination. This practice is unconstitutional.” *Keenan*  
6           *v. Hall*, 83 F.3d 1083, 1090-91 (9th Cir. 1996), *opinion amended on denial of reh’g*,  
7           135 F.3d 1318 (9th Cir. 1998) (quoting *LeMaire v. Maass*, 745 F.Supp. 623, 636  
8           (D.Or. 1990), *vacated on other grounds*, 12 F.3d 1444, 1458-59 (9th Cir. 1993)).  
9           This case presents the question of whether prison officials violate the Eighth  
10          Amendment when they keep one of three lights illuminated at all times in an SMU  
11          cell for a period of thirteen days.

12          Plaintiff has presented no credible evidence that the continuous illumination  
13          of one of three lights caused his sleep deprivation or any of his headaches,  
14          disorientation, or other related symptoms. Grenning failed to address any number of  
15          other causes for his symptoms, including the fact that he was head-butted prior to  
16          being sent to the SMU, that the injury had occurred when he was attacked in a prison  
17          bathroom, or if these symptoms were related to other medical issues about which he  
18          had complained in the past (*e.g.*, nausea, heartburn, aches, etc.). Additionally,  
19          Grenning testified extensively that he has experienced the same or similar symptoms  
20          prior to being incarcerated, outside of the SMU context, and far from the constant  
21          illumination that is the subject of this suit.

1 Grenning's testimony demonstrated that the causal link between the lighting  
2 and his symptoms was, at best, tenuously related. Plaintiff has failed to provide any  
3 evidence supporting the assertion that the 24-hour low-level illumination disrupted  
4 Grenning's sleep or caused him any harm. Therefore, the Court finds that the  
5 conditions that Grenning endured for thirteen days in the SMU in 2009 did not  
6 deprive him of the "minimal civilized measure of life's necessities," and fall far  
7 short of a deprivation that would be sufficiently serious to violate the Eighth  
8 Amendment's prohibition on "cruel and unusual punishment."

9 Furthermore, the Court has significant evidence regarding the necessity of the  
10 24-hour illumination in SMU cells. William Stockwell, a former supervisor in the  
11 Correctional Unit, testified that inmates are placed in the SMU when it is necessary  
12 for them to be viewed more closely by prison staff, whether that is due to their own  
13 improper behaviors, or due to their being targeted by others. In any circumstance,  
14 Stockwell testified that the inmates within the SMU are at a higher risk of attempting  
15 suicide; inflicting self-harm; having seizures; trying to stage attacks on passing  
16 guards; or hiding weapons, drugs, or other contraband. Defendant Miller-Stout also  
17 testified that the continuous lighting is maintained as a safety measure for the guards  
18 as well as inmates and is not imposed as any sort of punishment.

19 The testimony of both Stockwell and Miller-Stout demonstrate the legitimate  
20 penological purpose of the 24-hour lighting in the SMU and establish that the  
21 lighting is not, in fact, a "punishment" for purposes of an Eighth Amendment

1 analysis. Indeed, Plaintiff does not oppose the obvious need for lighting to conduct  
2 welfare-checks; he only requests that the lighting be lowered without specifying  
3 what would be acceptable to address his alleged symptoms.<sup>3</sup> The alternatives to 24-  
4 hour lighting offered by Plaintiff's witnesses, which included using a flashlight or  
5 switching lights on and off, were untethered to the realities of life in the SMU, such  
6 as the difficulty of using a flashlight to see an entire cell by flashing a light through  
7 the small window of the cell door or inadvertently telegraphing guard movements if  
8 the guards switched lights on and off or shown flashlights through the doors.

9       Considering that the lighting is tailored to clearly-defined safety purposes, that  
10 the lighting is not punitive and is not intended to be, that proposed alternatives likely  
11 would be insufficient to meet the needs of the prison staff and the safety needs of the  
12 inmates, and especially considering that the Plaintiff failed to prove causation of  
13 Grenning's symptoms, the Court finds that Grenning's complaints do not rise to a  
14 violation of the Eighth Amendment.

15       **(2) Whether Defendants acted with deliberate indifference toward**  
16       **Grenning's health or safety**

17       Although the Court has found that Plaintiff has failed to prove that his  
18 allegations are "sufficiently serious" to constitute an Eighth Amendment violation,

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19 <sup>3</sup> Although Rapp referenced 1 foot-candle as being sufficient to observe any  
20 activity in a cell, when asked if he had an opinion about the average amount of  
21 light that should be allowed in the SMU at night, he did not have an opinion.

1 as an alternative analysis, the Court will assess whether Defendants displayed  
2 deliberate indifference to Grenning's complaints.

3 To find deliberate indifference, the Court engages in a two-part inquiry.

4 First, the inmate must show that the prison officials were aware of a  
5 "substantial risk of serious harm" to an inmate's health or safety.  
6 *Farmer*, 511 U.S. at 837[]. This part of our inquiry may be satisfied if  
7 the inmate shows that the risk posed by the deprivation is obvious. *See*  
8 *id.* at 842[] ("[A] factfinder may conclude that a prison official knew of  
9 a substantial risk [to a prisoner's health] from the very fact that the risk  
was obvious."). Second, the inmate must show that the prison officials  
had no "reasonable" justification for the deprivation, in spite of that  
risk. *See id.* at 844[] ("[P]rison officials who actually knew of a  
substantial risk to inmate health or safety may be found free from  
liability if they responded reasonably.").

10 *Thomas v. Ponder*, 611 F.3d 1144, 1150–51 (9th Cir. 2010).

11 The evidence at trial demonstrated that Miller-Stout had seen an earlier  
12 grievance regarding lighting in the SMU, but she may not have been explicitly  
13 aware of Grenning's complaint. Miller-Stout could not recall the specifics of her  
14 response to a particular prisoner complaint from 2000 (Exhibit 53 at 5), but she  
15 testified that she was aware of an earlier ruling by a federal court that found the  
16 lighting in the SMU to be permissible. Although it is unclear whether Miller-Stout  
17 was aware of Grenning's complaint, even if this was established definitively and if  
18 Miller-Stout had responded exactly as she had to a prior complaint about lighting  
19 in the SMU back in 2000 (Exhibit 53 at 5), she would have had a reasonable basis  
20 to believe the lighting did not pose an undue risk to inmates because of the prior  
21 ruling by the federal court.

1 Defendant Fred Fox testified that he had dealt with Grenning's grievance  
2 directly as part of his duties as Classification Counselor. When Fox received  
3 Grenning's complaint, he brought it to his Custody Unit Supervisor, James Dyson,  
4 who informed Fox that when the American Corrections Association (ACA) had  
5 conducted an audit, they "cleared segregation" and that AHCC was in compliance  
6 with the ACA regarding the lighting in the SMU. Furthermore, Fox reached out to  
7 the AHCC medical department and checked if Grenning had contacted them about  
8 his alleged headaches or related symptoms that he attributed to the conditions in  
9 the SMU. Fox testified that the medical department informed him that they had  
10 not received any such communications.

11 Even assuming that Grenning had a valid argument that he was being  
12 deprived of his rights, the only evidence before the Court is that in response to  
13 complaints about the lighting, Defendants reasonably relied on a federal court  
14 ruling and the approval of the ACA. Furthermore, Fox went beyond that to learn  
15 from the AHCC that Grenning had not sought assistance for headaches beyond  
16 asking the circulating nurse for ibuprofen.<sup>4</sup>

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19 <sup>4</sup> Grenning testified that a nurse would circulate through the SMU during his time  
20 there, and when he complained to nurses about his headaches, they provided him  
21 with ibuprofen.

1 The Court finds that Defendants responded reasonably to Grenning's  
2 grievances especially when viewed in the context of their testimony regarding the  
3 thousands of grievances that Defendants had to address on topics ranging from the  
4 quality of the food to the timely transportation of property. Accordingly, even if  
5 the Court had found that Grenning's complaints about the lighting were valid, he  
6 has failed to prove that Defendants acted with "deliberate indifference."

7 Additionally, the fact that prisoners are now provided with sleep masks,  
8 even if they cannot afford them, further demonstrates that Defendants took action  
9 to assuage the concerns of inmates like Grenning, and further weakens Grenning's  
10 claim of deliberate indifference.

11 **(3) Whether Grenning will suffer an irreparable injury absent an**  
12 **injunction**

13 Defendants asserted throughout this litigation that Grenning lacked standing  
14 to bring his claims regarding the lighting in the SMU. In order to have Article III  
15 standing, a plaintiff must establish:

16 (1) that the plaintiff ha[s] suffered an "injury in fact"—an invasion of  
17 a judicially cognizable interest which is (a) concrete and particularized  
18 and (b) actual or imminent, not conjectural or hypothetical; (2) that  
19 there be a causal connection between the injury and the  
20 conduct complained of—the injury must be fairly traceable to the  
21 challenged action of the defendant, and not the result of the  
independent action of some third party not before the court; and  
(2) that it be likely, as opposed to merely speculative, that the  
injury will be redressed by a favorable decision.



1 *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d  
2 1260, 1268 (W.D. Wash. 2005) (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)  
3 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992))).

4 As discussed previously, Grenning has not shown that the lights within the  
5 SMU caused an injury-in-fact that could be redressed by an injunction. Now that all  
6 of the relevant evidence has been presented at trial, the Court finds that Plaintiff's  
7 alleged injuries are not more likely than not attributable to 24-hour lighting.  
8 Plaintiff testified that he still suffers from headaches similar to the ones that are at  
9 the heart of this suit, including one only a day before trial when he was meeting with  
10 counsel. No injunction regarding SMU 24-hour lighting would have prevented that  
11 headache. Whether Plaintiff is in SMU or in the general population (and prior to  
12 being incarcerated, out in his daily life), he apparently suffers from the same or  
13 similar symptoms; therefore, an injunction would do nothing to remedy his alleged  
14 injuries.

15 In addition, the conditions within the SMU at AHCC have been changed since  
16 Grenning was placed there in 2009. Grenning requests that the lights be dimmed in  
17 the SMU, but the 24-hour lighting has been dimmed since 2009. Grenning now  
18 would have access to a sleep mask if he is ever placed in the SMU again. Despite  
19 Grenning's assertions that these changes are insufficient, the Court finds that  
20 Plaintiff has failed to prove by a preponderance of the evidence that the conditions  
21 as they existed in 2009 caused him harm or that he will suffer "irreparable harm"

1 currently or in the future when AHCC already has a dimmer light in the SMU and  
2 grants access to sleep masks. The Court finds that Plaintiff has failed to prove that  
3 he will suffer an irreparable harm without an injunction.

4 **(4) Whether the balance of hardships between the parties absent an**  
5 **injunction weighs in Grenning's favor**

6 As previously stated, the Court finds that Grenning has not proven any  
7 hardship caused by the 24-hour lighting beyond his subjective dissatisfaction. Also,  
8 if Grenning is placed in the SMU absent an injunction, he will be subjected to  
9 dimmer 24-hour lighting than he experienced previously, and he can use a sleep  
10 mask to cover his eyes. The Court finds his alleged remaining "hardships" to be  
11 minimal.

12 On the other hand, an injunction to dim the 24-hour lighting within the SMU  
13 would impose significant costs on Defendants. With dimmer lights, officers would  
14 have more difficulty conducting "welfare-checks," to see and identify inmates'  
15 injuries, risks to officers or other inmates, and the presence of contraband. If  
16 Defendants were forced to turn off the 24-hour lights and only switch them on  
17 during welfare-checks, Miller-Stout testified that inmates would be better able to  
18 predict guard movements and could plan illicit activities accordingly. Additionally,  
19 Plaintiff has presented no evidence that the intermittent lighting would affect  
20 inmates' sleep any less than the current 24-hour bulb in a blue sleeve.

21 Plaintiff did not provide evidence of a level of brightness that would both  
satisfy Grenning while still allowing correctional officers to carry out their duties

1 and did not argue for the lights to be shut off entirely. The Court finds that absent an  
2 injunction, Grenning will not be subjected to any undue harm, but an injunction  
3 would impose significant hardship on Defendants. Therefore, the Court finds that  
4 the balance of hardships weighs against entering an injunction.

5 **(5) Whether the public interest will be disserved by an injunction**

6 Although there is a strong public interest in maintaining prisons that adhere to  
7 Constitutional standards, Plaintiff has failed to demonstrate how either the  
8 conditions in the SMU in 2009 or the current conditions fail to do so.<sup>5</sup> There also is  
9 a strong public interest in maintaining safe prisons where correctional officers are  
10 able to carry out their duties by checking on inmates and seeing if they are in danger.  
11 An injunction in this case would make Defendants' duties more difficult without  
12 providing any demonstrable benefit to Grenning or the public.

13 **CONCLUSION**

14 Based on the foregoing findings of fact and conclusions of law, the Court  
15 finds that Grenning has not met his burden of establishing a violation of his rights  
16 under the Eighth Amendment of the United States Constitution. Defendants  
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18 <sup>5</sup> Defendants also reference the additional statutory requirements of 18 U.S.C. §  
19 3626 for an injunction regarding prison conditions. In light of the Court's  
20 determination that Plaintiff failed to provide any basis to impose an injunction, the  
21 Court need not address these heightened requirements.

1 previously moved for Judgment on Partial Findings Under Rule 52(c), ECF No. 177.  
2 In light of the fact that the Court heard all of the evidence presented in this case from  
3 both parties and has made a fully-informed decision in favor of Defendants, the Rule  
4 52(c) motion is denied as moot.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Judgment shall be entered in favor of all Defendants.

7 2. Defendants' Motion for Judgment on Partial Findings Under Rule 52(c),  
8 **ECF No. 177**, is **DENIED AS MOOT**.

9 3. All other pending motions, if any, are **DENIED AS MOOT**.

10 The District Court Clerk is directed to enter this Order, provide copies to  
11 counsel, **enter Judgment in favor of Defendants** and **close this case**.

12 **DATED** this 5th day of October 2016.

13  
14 *s/ Rosanna Malouf Peterson*  
15 ROSANNA MALOUF PETERSON  
16 United States District Judge  
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